

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 910
Case No. 98-17F
(Second-Stage PUD & Map Amendment
@ 100 Potomac Avenue, SE-Florida Rock Properties, Inc.)
November 8, 1999

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on December 7, 1998, to consider the application of Florida Rock Properties, Inc. The application requested final (second-stage) review and approval of a Planned Unit Development ("PUD") and related map amendment pursuant to Chapter 24 and Section 102, respectively, of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning (the "Zoning Regulations"), for property located at 100 Potomac Avenue, SE, Washington, D.C. A hearing on the application was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The applicant, Florida Rock Properties, Inc., is the owner of Lots 800, 801 and 802 in Square 707, Lot 809 in Square 708, Lots 807 and 808 in Square 708E, and Lot 806 in Square 708S, having a consolidated street address of 100 Potomac Avenue, SE, Washington, D.C. (the "PUD Site").
2. The applicant filed with the Zoning Commission an application requesting final (second-stage) approval of a PUD for the PUD Site and approval of a Zoning Map amendment for the PUD Site from a Zone District classification of "M" to a Zone District classification of "C-3-C". The application was assigned Zoning Commission Case No. 98-17F (the "Second-Stage Case") by the Office of Zoning.
3. The Zoning Commission previously granted first-stage (preliminary) approval of the PUD and related map amendment changing the Zoning Map designation of the PUD Site from a Zone District classification of M to a Zone District classification of C-3-C, subject to certain guidelines, conditions and standards. Zoning Commission Order No. 850, dated June 8, 1998, reflected the Zoning Commission's decision on that application ("First-Stage Order").

4. The PUD Site contains approximately 253,502 square feet of land area. The PUD Site is bounded by Potomac Avenue, SE on the north, 1st Street, SE on the east, the Anacostia River on the south, and the Frederick Douglass Bridge and access ramp on the west. The PUD Site has approximately 850 linear feet of frontage on the Anacostia River.
5. The PUD Site is currently zoned as Zone District M, and is used for industrial purposes in the operation of a concrete mixing, batching and storage facility, including the open storage of sand, gravel and other aggregate materials used in the production of concrete.
6. The applicant owns all of Square 664E. Square 664E is identified in the application as the "Amenity Site". The Amenity Site is currently zoned as Zone District M. The Amenity Site contains approximately 91,000 square feet of land area and is bounded by S Street, SW, T Street, SW, Water Street, SW, and the Anacostia River. The Amenity Site has approximately 300 linear feet of frontage on the Anacostia River.
7. The Amenity Site is currently used for industrial purposes such as the batching and open storage of sand, gravel and other aggregate materials used in the production and distribution of concrete.
8. The application requested a second-stage PUD approval permitting the development on the PUD Site with a project (the "PUD Project") described as follows:
 - a. a two-building commercial development on the PUD Site containing a total of approximately 1,521,013 square feet of gross floor area devoted to a mix of office, retail, and service commercial uses (the "PUD Site Buildings");
 - b. an open air entry to the PUD Project to provide a direct vista to the Anacostia River waterfront;
 - c. a maximum building height of the portion of the PUD Project located within 110 feet of the bulkhead along the waterfront of the Anacostia River of not to exceed 109 feet, and a maximum building height of the portion of the PUD Project located more than 110 feet from the bulkhead along the Anacostia River of not to exceed 130 feet;
 - d. a set back of the building facades of the PUD Site Buildings fronting on the Anacostia River of no less than 50 feet from the bulkhead along the waterfront of the Anacostia River, as measured from the waterside face of the bulkhead along the Anacostia River;

- e. a maximum gross floor area for the PUD Site Buildings of 6.0 FAR, as applied to the PUD Site;
 - f. an off-street parking facility for the PUD Project located beneath the PUD Site Buildings containing parking spaces for approximately 1,495 vehicles, including handicap and van pool vehicle spaces; this number of spaces exceeds, by more than 50%, the number of spaces required under the Zoning Regulations for the PUD Site Buildings;
 - g. an off-street loading facility serving the PUD Project located within the PUD Site Buildings consisting of 8 loading berths and service delivery spaces, all provided in accordance with required standards applicable under the Zoning Regulations;
 - h. a maximum overall percentage of lot occupancy on the PUD Site of 58%;
 - i. a waterfront esplanade along the banks of the Anacostia River for the full length of the PUD Site with retail/exhibit area, seasonal cafe pavilions, and an event area (the "Waterfront Esplanade"); and
 - j. an open courtyard and cascading steps between the two (2) PUD Site Buildings extending from Potomac Avenue, SE to the Anacostia River.
9. The applicant proposed, as a condition to any second-stage approval, the donation and dedication of the Amenity Site in its entirety to the Earth Conservation Corps ("ECC") for the development of facilities for a maritime education center, the development of a publicly accessible landscaped waterfront park at the terminus of South Capitol Street, and the development of approximately 253,000 square feet of gross floor area dedicated to residential uses.
10. ECC is a non-profit organization based in Southeast Washington. Since 1989, the ECC has worked to educate and train disadvantaged youth in projects helping to restore the environment, and, at the same time, to strengthen local communities by improving economic opportunity, increasing civic awareness and restoring pride. Since 1989, ECC members have removed up to 5,000 discarded tires from lower Beaver Dam Creek on the Anacostia River, have worked to restore the bald eagle to Washington, D.C., re-vegetated native grasses and trees on miles of riverfront property, and raised and released millions of salmon, in conjunction with five Indian reservations in the Pacific Northwest. In Washington, D.C., ECC has worked with 18-25 year old youths from

public housing communities of Arthur Kapper, Carrollsburg, Hopkins, Potomac Gardens, Barry Farms and Valley Green. The District of Columbia effort, through ECC's Eagle Corps, has received funding through partnerships with various environmental, social service and governmental agencies, including AmeriCorps and the D.C. Housing Authority.

11. Since 1992, ECC has had substantial success in supporting its programs. It has raised over \$9 million, with donations and grants from AmeriCorps, the U.S. Department of Energy, the D.C. Housing Authority, the National Fish and Wildlife Foundation, and very substantial private and foundation donations. It is supported by a large number of corporations, foundations and individuals, and has the benefit of a strong, committed board of directors.
12. Over a period of five years since 1992, funding for ECC's programs has increased from a single \$50,000 grant to more than \$9.5 million raised for programs which put youth to work in and for the environment. ECC has expressed its strong commitment to and confidence in its ability to see the program elements of the Amenity Site -- the maritime education project, the waterfront terminus park, and residential development -- through to completion. In 1997, ECC received the Peter F. Drucker Award for non-profit management and was also recognized by the Council of the District of Columbia for its accomplishments.
13. The applicant has proffered the following amenities and benefits to the District of Columbia if second-stage approval of the application is given by the Zoning Commission:
 - a. Of General Applicability:
 - (i) Superior architecture/planning of both the PUD Site and the Amenity Site.
 - (ii) An enhanced and enlivened waterfront, along the Anacostia River -- the Waterfront Esplanade on the PUD Site and the waterfront terminus park on the Amenity Site--in each case open and accessible to the public.
 - (iii) Scheduled elimination of industrial uses on PUD Site and Amenity Site consistent with the stated policy underlying the planning intentions proposed Buzzard Point-Capitol Gateway Overlay District, Z.C. Case No. 96-3/89-1 (the "BP Overlay").
 - b. As to PUD Site:

- (i) Enhanced utilization of the Navy Yard MetroRail Station.
- (ii) Point to point shuttle bus service to and from PUD Site to Navy Yard Metro Rail Station supported by the applicant at no cost to riders.
- (iii) Commitment to the first source employment program which the applicant has entered into with the District of Columbia, especially for the benefit of Ward 2 and Ward 6 residents.
- (iv) Significantly enhanced tax revenues to District of Columbia as a result of accelerated development of the PUD Site to its highest and best use.
- (v) Commitment to retail and similar publicly accessible grade level uses in the PUD Site Buildings.

c. As to Amenity Site:

- (i) Donation of the fee interest in Amenity Site, containing 91,000 square feet of land area, to ECC, a non profit entity, for its maritime education program, and for development of residential and open space uses.
- (ii) Dedicated residential component of approximately 253,000 gross square feet to be located on Amenity Site, with such residential development to be constructed at such time as market rate residential development is economically feasible.
- (iii) Dedicated open space, terminus park on the Amenity Site at the foot of to South Capitol Street, with public waterfront access.
- (iv) Donation to ECC of proposed schematic design documents for ECC's maritime education center facilities, for the proposed park at the terminus of South Capitol Street and for the proposed residential development, all to be located on Amenity Site.

14. The District of Columbia Generalized Land Use Map Element of the Comprehensive Plan for the National Capital identifies the PUD Site and the Amenity Site as being in the high density residential, medium high density commercial, and production and technical employment land use category. The Comprehensive Plan also designates the PUD Site and the Amenity Site as a Development Opportunity Area. The PUD Site and the Amenity Site are also within the boundaries of the Central Employment

Area and the District of Columbia Enterprise Zone recently established by the United States Congress under Title VII - Incentives for Revitalization of the District of Columbia of the Taxpayer Relief Act of 1997. This Title provides certain tax benefits to encourage economic development in the District of Columbia.

15. The PUD Site and the Amenity Site are located within the Capitol Gateway/Buzzard Point area. The Capitol Gateway/Buzzard Point area, including the PUD Site and Amenity Site, represents a unique waterfront development opportunity and valuable land resource for future development in the City.
16. The Capitol Gateway/Buzzard Point area is generally zoned C-M-1, C-M-2 and M Zone Districts, and is characterized by industrial uses. The area has been the subject of several land use and planning studies, including Anacostia Waterfront Concept Master Plan prepared for the Federal City Council and the D.C. Government by Wallace Roberts and Todd in 1988, a petition by the Buzzard Point Planning Association, Inc. (BPPA) submitted to the Zoning Commission in 1989, and a zoning proposal and geometric plan submitted by the Capitol Gateway group in 1991 and a Buzzard Point/Near Southeast Vision 2020 Background Report in 1992 by the District of Columbia Office of Planning (the "Office of Planning").
17. The PUD Site and the Amenity Site are located within the boundaries of the proposed BP Overlay. Under the provisions of the BP Overlay, the Office of Planning recommended split Zone District Classifications for the PUD Site and the Amenity Site, with W-2 Zone District being mapped to a depth of 110 feet from the waterfront of the Anacostia River and CR Zone District on the remainder of the Sites. The application is substantially in conformance with the provisions of the BP Overlay. The application provides for residential uses on the Amenity Site and offers the dedication of a substantial portion of the Amenity Site to a public use in the form of a publicly accessible waterfront park. The PUD Site and the Amenity Site are designed to benefit the community and stimulate redevelopment of the Capitol Gateway/Buzzard Point area.
18. If adopted by the Zoning Commission, the BP Overlay would mandate a 50-foot building setback from the waterfront of the Anacostia River to be maintained as open space comparable to the setback proposed in the application. It also provides for bonus density for developing residential space, for complying with the waterfront setback, and for complying with the lower density and height standards along the waterfront of the Anacostia River.

19. The C-3-C Zone District permits matter-of-right major business and employment centers of medium/high density development, including office, retail, housing and mixed uses. In the C-3-C Zone District, development is permitted to a maximum height of 90 feet, a maximum FAR of 6.5 for residential and other permitted uses, and a maximum lot occupancy of 100%.
20. Under the Zoning Regulations, the Zoning Commission has the authority pursuant to the provisions of Chapter 24 of the Zoning Regulations applicable to a C-3-C Zone District, to increase the permitted height of building to that permitted by the Height of Buildings Act of 1910 and to increase the allowable FAR to 8.0 for commercial uses. The Zoning Commission may also impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified above for the height of building, FAR, lot occupancy, parking, loading, yards or courts. The Zoning Commission may also approve uses that are permitted as special exceptions and which would otherwise require approval by the Board of Zoning Adjustment.
21. Pursuant to the Chapter 24 of the Zoning Regulations, the Zoning Commission has the authority to consider this application as the second-stage of a two-stage PUD proceeding.
22. On September 14, 1998, the Zoning Commission set the application down for public hearing, having found that the conditions specified in the First Stage Order for consideration of an application for second-stage approval on the PUD had been satisfied.
23. In a pre-hearing submission, dated October 8, 1998, (the "Pre-hearing Submission"), the applicant (a) submitted a transportation study prepared by Science Applications International Corp. (SAIC) and dated October 8, 1998, which evaluated the transportation impacts of the PUD project and the Amenity Site; (b) submitted an economic report prepared by Basile Baumann Prost & Associates, Inc., and dated October 8, 1998, which evaluated the economic impacts and benefits of the PUD Site and the Amenity Site, and made certain modifications of the proposal to provide publicly accessible grade level uses in the PUD Site Buildings to further enliven the waterfront area of the PUD Project; (c) submitted a proposed landscaping plan for the Amenity Site under a reversionary scenario; and (d) made other submissions as required by Sections 3013.1(a), 3013.2, 3013.6(a) and (b) of the Zoning Regulations.
24. The Zoning Commission held a public hearing in the Second-Stage Case on December 7, 1998.

25. The record in Zoning Commission Case No. 97-16P, from which the First-Stage Order arose, was incorporated by reference into this Second-Stage Case.
26. Other than the participation by ANC 6B and ANC 2D, there were no requests for party status made at the December 7, 1998 hearing or filed with Zoning Commission.
27. By hearing testimony, supplementing the application and the Pre-hearing Submission, the applicant provided evidence that it had satisfied each of the guidelines, conditions and standards set forth in First-Stage Order and the Zoning Regulations applicable and required for Second-Stage approval of the application. The applicant's presentation can be summarized as follows:
 - a. the applicant submitted a design for the PUD Site Buildings that is consistent with the guidelines, conditions and standards of the First-Stage Order.
 - b. the design for the PUD Site Buildings provides for a maximum height of building for the portion of the PUD Site Buildings located 110 feet or less from the bulkhead along the waterfront of the Anacostia River of not to exceed 109 feet, and a maximum height of building for the portion of the PUD Site Buildings located more than 110 feet from the portion of the bulkhead along the waterfront of the Anacostia River of not to exceed 130 feet. The building closest to the Frederick Douglass Bridge and ramp rises to a height of building of 130 feet (the "West Building"), while the maximum height of building of the other building is 109 feet (the "East Building").
 - c. the design for the PUD Site Buildings provides for a gross floor area equivalent to 6.0 FAR, devoted exclusively to commercial uses.
 - d. the lot occupancy of the PUD Site is restricted to approximately fifty-eight percent (58%), while the Zoning Regulations would otherwise permit one hundred percent (100%) lot occupancy.
 - e. the PUD Project retains the approved plan of the First Stage Order of two (2) PUD Site Buildings, separated by a vista stretching from the terminus of Half Street, SE at Potomac Avenue, SE to the waterfront of the Anacostia River.

- f. the PUD Project has been designed with an open courtyard leading to cascading steps down to the Anacostia River waterfront, a Waterfront Esplanade with the festive Waterfront Pavilions, and a separate events area.
- g. to enliven the Waterfront Esplanade, there will be two waterfront pavilions (the "Waterfront Pavilions") located within the Waterfront Esplanade serving food and beverages, as well as an events area on the bank of the Anacostia River at the foot of the cascade of steps between the two (2) PUD Site Buildings, and retail/exhibition space in the East Building at the concourse level fronting on the Waterfront Esplanade. Waterfront activity will also be enhanced by the development of the Amenity Site, which lays the groundwork for a necklace of public open spaces strung on a continuous pathway along the Anacostia River waterfront.
- h. to enhance the Potomac Avenue frontage of the East Building and make a welcoming statement to the surrounding community, ground floor retail shops and services will be provided on the grade level of the East Building on Potomac Avenue.
- i. the applicant provided a property line survey for the PUD Site, recorded with the District of Columbia Office of the Surveyor, which reflected the land area between the PUD Site and the existing bulkhead line. The applicant also supplied authorization for the bulkheads issued by the U.S. Army Corps of Engineers to establish new bulkheads along the waterfront of the PUD Site. The Corps allows a new bulkhead to be constructed eighteen inches beyond the existing bulkhead line.
- j. The proposed antenna locations on the roofs of the PUD Site Buildings are in compliance with the applicable Zoning Regulations.
- k. In order to facilitate transportation between the PUD Site and the Navy Yard MetroRail Station and encourage use of the MetroRail, the applicant has designed a point to point shuttle bus service plan to carry passengers between the Navy Yard MetroRail Station and the PUD Site.
- l. The application was submitted to the District of Columbia Department of Public Works, the District of Columbia Metropolitan Police Department and the District of Columbia Office of Tax and Revenue for review and comment as required by the First-Stage Order.

- m. The applicant submitted details regarding the timing of the conveyance of the Amenity Site to ECC, and an outline of the restrictive covenants applicable to the Amenity Site, including a description of the mechanisms to accomplish the conveyance, the phasing of development, detailed plans for development of the Amenity Site, the mechanism for fixing and enforcing the design plan and development guidelines, a reversionary mechanism in the event that development did not occur within specified dates, a mechanism by which a portion of the Amenity Site would be reserved for residential development, and a mechanism for the Zoning Commission to review on a periodic basis the economic feasibility of development of the residential component of the Amenity Site.
- n. The applicant submitted an executed First-Source Employment Agreement with the Department of Employment Services.
- o. The applicant submitted an executed Memorandum of Understanding with the Local Business Opportunity Commission ("LBOC").
- p. The applicant proposed a transportation management program for the offstreet parking facility of the PUD Site Buildings, with three components, i.e., (i) design elements in the form of pedestrian and bicycle facilities and preferred parking for vanpools and carpools, (ii) operational element in the form of commuter assistance programs and the promotion of flex time schedules, and (iii) a coordinator to monitor the performance of the program. The applicant's design provides 1,495 parking spaces for the PUD Site, as compared with the zoning requirement of 835 spaces.
- q. Development of the PUD Site will reduce truck traffic in the area (with the elimination of industrial uses) and will have only a minimal effect on area traffic circulation.
- r. Recent evaluation of the economic feasibility of residential development on the Amenity Site indicates that current economic and market conditions would not support multi-family residential development on the PUD Site or the Amenity Site at the present time. Current sales in the Southeast and Southwest areas for condominiums are around \$100 a square foot, whereas the cost of delivering a multi-family today on the Amenity Site would be approximately \$200 a square foot. Building costs for rental units range from \$150 to \$175 per square foot, again an amount which cannot be justified by the amount of rental income that could

possibly be generated by a residential project at the Amenity Site under present market conditions. A combination of changed market environment, changed physical environment, tax or other government financial incentives, and/or improvement in the capital markets will be necessary before market rate residential development can occur at the Amenity Site.

28. The applicant submitted evidence in the form of testimony and the report of the applicant's transportation consultant reviewing the potential effects of the PUD Project and the Amenity Site on traffic and transportation conditions in the area. The applicant's evidence, supported by testimony, concludes that PUD Project will have only a marginal effect on the existing traffic conditions in the area.
29. The applicant provided testimony and findings through its economic consultant, based upon field surveys, market reconnaissance, financial and fiscal analysis, development experience, and discussions with the Office of Planning that:
 - a. the locational and site advantages of the PUD Site are such that it represents a truly exceptional opportunity for the District of Columbia. Indeed, these advantages make the PUD Site the ideal location for the development of large, predominately office uses.
 - b. The Amenity Site, located adjacent to the Anacostia River waterfront and the Frederick Douglass Bridge and South Capitol Street, is an ideal gateway location with a potential waterfront amenity. There is virtually no residential use within proximity of either the Amenity Site or the PUD Site, and the Amenity Site offers an opportunity to bring residential uses to the immediate vicinity.
 - c. the PUD Site's access to the Navy Yard MetroRail Station and Capitol Hill makes it a unique opportunity for the District of Columbia to provide a large, attractive and accessible office center.
 - d. the District of Columbia is facing the reality that there are few large developable parcels in the District of Columbia where the potential exists to construct floorplates large enough (over 50,000 square feet per floor) and flexible enough to meet the needs of large GSA-type tenants or headquarter-type office organizations.
 - e. as leases for large federal government office tenants expire and departments and agencies attempt to consolidate into fewer, larger spaces, the District of Columbia is likely, due to the lack of readily available and developable open space, to become less and less

competitive in its ability to provide such sites. The PUD Site represents one of only a few opportunities for the District of Columbia to be competitive with Maryland and Virginia for large-space office tenants, including federal government office tenants.

30. The applicant provided evidence, through testimony and the findings of its economic consultant, to the effect that implementation of the PUD will provide significant economic and fiscal benefits to the District of Columbia (in constant 1998 dollars) as follows:
 - a. Construction period direct on-site District tax revenues of \$7.6 million;
 - b. Construction period direct on-site full-time equivalent employment of 1540 person years;
 - c. Construction period direct on-site payroll of \$56.7 million;
 - d. Permanent on-site direct annual employment of 6,121 persons;
 - e. Permanent on-site direct annual payroll of \$239.5 million; and
 - f. Permanent direct annual District tax revenue of \$17.8 million, having a capitalized value of \$222 million.
31. The applicant provided evidence, through testimony and the findings of its economic consultant, that economic development of the Amenity Site for residential uses is not economically feasible at this time due to (a) the lack of attractive physical and market conditions in the vicinity of the PUD Site, (b) a relatively weak market for residential development generally, particularly outside of the core downtown area, and the (c) lack of financial viability of non-financially assisted residential projects in any central District of Columbia location at this time.
32. The applicant also supplied evidence, through the testimony and the findings of its economic consultant, that ground floor retail uses on the PUD Site are needed to enliven the waterfront area of the PUD Project. The Zoning Commission notes, as proven in the Baltimore Inner Harbor and other City waterfront locations, that initial waterfront enlivenment has been achieved through public spaces and a series of programmed events rather than by retail space alone. In its Pre-hearing Submission, the applicant committed to provide approximately a 5,000 gross square foot outside event area at the foot of the cascade of steps of the PUD Project, two waterfront pavilions providing food and beverage service totaling approximately 2,350 gross square feet and an outdoor

plaza/eating area totaling approximately 4,200 gross square feet. These areas were supplemented by approximately 5,000 to 10,000 gross square feet of specialty retail or exhibition space integrated into the East Building. In addition to the Waterfront Pavilions, events area, and specialty retail/exhibition space, approximately 5,500 gross square feet of "ribbon retail" (narrow depth retail with significant street frontage) is planned on the north side of the East Building of the project along Potomac Avenue, SE. This ribbon retail area would consist of a series of retail spaces designed to service the convenience needs of the employees of and visitors to the PUD Project as well as residents of the adjacent neighborhoods.

33. The Office of Planning determined that the applicant was in general compliance with the conditions set forth by the Commission in the First-Stage Order and recommended approval of the application.
34. The D.C. Department of Public Works determined that the PUD would not have any adverse transportation impacts, but recommended that the applicant implement a transportation management program. The Department further noted that it stood ready to work closely with the applicant and other land owners in the area to coordinate roadway improvements in conjunction with implementation of the proposed PUD Project and other planned developments in the area.
35. ANC 6B did not oppose the application, but recommended that if the Zoning Commission approved the application, it do so on the condition that (a) the applicant re-evaluate the feasibility of its residential uses in light of changing conditions, including the District's revitalization plan for the Navy Yard area, and (b) the applicant prepare a detailed employment and training plan for the District residents to be reviewed and approved by ANC 6B and the Zoning Commission before the applicant signs construction contracts.
36. ANC 2D endorsed the position of ANC 6B and recommended that the Zoning Commission attach several additional conditions to any approval. The first recommended condition was that the Zoning Commission make the proposed traffic management program a condition of the PUD; second, that the Zoning Commission not take final action on the PUD until it acts on the area-wide re-zoning; and third, that the Zoning Commission not renew the PUD at the end of its term unless the applicant has a firm commitment from a tenant.
37. The application was supported by a number of community organizations, i.e., the Capitol Hill Arts Workshop, the Holy Comforter Community Action Group, the Anacostia Watershed Society, the President of the

Berry Farm Residence Council, Strive-DC, a job readiness training program, and Bridges to Friendship. Additionally, such business organizations as the Barracks Row Business Association and the Anacostia Economic Development Corporation expressed support for the application.

38. Councilmember Sharon Ambrose, representing Ward 6 on the Council of the District of Columbia, supported the application. She additionally testified that she supported the concept of residential development on the Amenity Site. She concurred with the applicant however that to expect residential development in the near term was not realistic or feasible. She stated that it would be appropriate to permit development of the PUD Site presently and require residential development to occur later, so as not to create an insurmountable obstacle for any development project in this area of the City at this time. She also noted that early concerns about public access to the waterfront and the size and density of the PUD Project had been addressed by the applicant in the modified design of the PUD Site Buildings. She further noted that the waterfront park of Amenity Site at the terminus of South Capitol Street would provide generous public access to the Anacostia River and would be an attractive terminus to South Capitol Street. Finally, Ms. Ambrose emphasized the importance of the public amenities contained in Amenity Site, including the opportunities to have ECC develop the proposed maritime education center.
39. At the conclusion of the December 7, 1998 hearing, the Zoning Commission made the following requests of the applicant:
 - a. revise the design of the waterfront park on the Amenity Site at the terminus of South Capitol Street (the "Terminus Park") to remove the proposed public parking area, and to modify the design of the Terminus Park to more effectively relate to the Anacostia River;
 - b. review, re-evaluate and refine the design and finish treatment on the PUD Site Buildings and submit detailed elevations which would present information in color so as to give the Zoning Commission a more accurate picture of the PUD Site Buildings' appearance;
 - c. further develop the design of the Waterfront Pavilions to show locations of restrooms, kitchens, and other features;
 - d. clarify the respective roles of ECC and the applicant in terms of both the residential and non-residential elements of the development of the Amenity Site.

- e. submit a proposed supplemental employment and training assistance program as suggested by ANC 2D and ANC 6B.
 - f. develop typical unit plans for residential development on Parcel 3 of the Amenity Site.
 - g. submit a proposed model for use in determining when market rate residential development would be economically feasible.
 - h. confirm that all approvals and authorizations had been obtained from the U.S. Army Corps of Engineers and the District of Columbia to allow construction of the bulkheads as presented to the Zoning Commission.
 - i. submit a revised landscape plan for the portion of the PUD Site within the right of way of the Frederick Douglass Bridge and widen the pedestrian pathway east of the East Building;
40. In light of these requests, the Zoning Commission afforded the applicant the opportunity to further supplement the record in the Second-Stage Case and kept the record of the Second-Stage Case open for the applicant's responses to these requests.
41. The Zoning Commission granted the applicant an extension of time to May 17, 1999, in which to submit its responses. The Zoning Commission afforded parties in the Second-Stage Case the opportunity to respond with any comments on the applicant's responses by May 24, 1999.
42. On May 17, 1999, the applicant submitted Applicant's Responses to Inquiries of the Zoning Commission, dated May 17, 1999, (the "Responses"), responding to the Commission's inquiries made at the December 7, 1988 hearing. The applicant delivered a copy of the Responses to ANC 2D and ANC 6B. Neither ANC filed any comments on the Responses with the Zoning Commission as of the close of the record in the Second-Stage Case on May 24, 1999.
43. In the Responses, the applicant submitted revised plans, narrative descriptions, and proposed conditions to the PUD. In general, the Responses contained, (a) a supplemental employment and training assistance program, (b) an enhancement of the landscaping of the PUD Site, especially in the land area within the bridge right-of-way, (c) an enhancement and commitment to grade level retail/service uses on Potomac Avenue, SE frontage of the PUD Buildings, and "ribbon" exhibit/specialty retail along the portion of the East Building fronting on

the Waterfront Esplanade, (d) refined design of the Waterfront Pavilions and the proposed terminus park on the Amenity Site, (e) simplification of the development arrangements with ECC, (f) refinement of the architectural treatment of PUD Site Buildings and the finish treatment of the Potomac Avenue and Anacostia River elevations, (g) confirmation of the waterfront bulkheads authorizations, (viii) development of illustrative residential unit plans, and (h) formulation of residential feasibility standards.

44. More specifically, with regard to the PUD Site, the applicant submitted, as part of the Responses, the following:

- a. detailed revised elevations for the facades of the PUD Buildings indicating that the facades of the PUD Buildings were to be primarily composed of precast concrete, articulated by complimentary glass and metal curtain wall elements along the facades of the PUD Buildings fronting the Anacostia River.
- b. a refined design for the Waterfront Pavilions for food and beverage service, increasing the size and capacity, thus further enhancing the possibilities of enlivening of the Waterfront Esplanade of the PUD Project.
- c. a revised proposal for dedicated, publicly accessible retail type spaces at grade and proposed an expansion in the amount of dedicated retail/service space along Potomac Avenue, SE frontage of the PUD Buildings to occupy not less than 40% of the linear footage of both of the PUD Buildings at grade, and agreed to dedicate this space to community related retail and service uses.
- d. an increase in the amount of space dedicated to specialty retail and exhibition space at the Waterfront Esplanade level of the East Building, and agreed to dedicate that expanded area to such publicly accessible uses as a condition of any approval in the Second-Stage Case.
- e. a revised landscaping plan for the PUD Site to ensure that the portion of the PUD Site within the right of way of the Frederick Douglass Bridge would be appropriately landscaped and a revised pedestrian circulation plan agreed that the pedestrian walkway east of the East Building would be widened and appropriately landscaped.
- f. Confirmation from the U.S Army Corps of Engineers that the bulkheads proposed by the applicant are authorized and can be

constructed at the locations indicated by the applicant, and that permits issued by the District of Columbia for the construction of the bulkheads and infilling the land side areas of the bulkhead were still valid.

- g. Development of an employment plan to ensure that employment opportunities, both in the pre-construction, construction and post-construction phases, are made available to local residents. The focus of the program will include working with community organizations and residents, informing them of temporary as well as permanent, long-term employment opportunities.
45. More specifically with regard to the Amenity Site, the applicant, in the Responses,
- a. revised the design plan for the Terminus Park to remove off street surface vehicular parking from the park design plan and refocus the design of the Terminus Park to relate more to the Anacostia River.
 - b. proposed a set of standards for determining when market-rate residential development could be deemed economically feasible on Parcel 3 of the Amenity Site, and upon which biannual reporting to the Zoning Commission could be based. Biannual reporting was proposed to commence on the tenth (10th) anniversary of the commencement of construction on the PUD Site.
 - c. clarified and simplified the mechanism for implementation of development plan for the Amenity Site to provide additional assurances that the Amenity Site would be developed as proposed by the applicant.
46. With regard to the subject of clarification and simplification of its proposed program for implementation of the development program for the Amenity Site, the applicant proposed the following:
- a. to encumber legal title to the Amenity Site with a series of restrictive covenants related to development of the Amenity Site in accordance with the applicable elements of any order issued in this Second-Stage Case granting approval of the application (the "Order"), burdening and binding successor owners of the Amenity Site and portions thereof (the "Amenity Site Covenants"). The applicant agreed to record the Amenity Site Covenants among the land records of the District of Columbia at the time that the applicant commenced construction of the PUD Site Buildings

pursuant to any Order issued in this Second-Stage Case. The Amenity Site Covenants would require approval of the Office of the Corporation Counsel of the District of Columbia for consistency with any Order issued in this Second-Stage Case. Recordation of Amenity Site Covenants would be a condition to obtaining a building permit for the PUD Site Buildings. The Amenity Site Covenants would cover the conditions related to the use and development of the Amenity Site.

- b. to donate and convey its fee interest in the entire Amenity Site to ECC as of a date that is no later than thirty (30) days after the date of commencement of construction on the PUD Site Buildings pursuant to any Order issued in this Second-Stage Case (the "Conveyance Date"), subject however in any case to the Amenity Site Covenants previously imposed by the applicant related to development of the Amenity Site in accordance with the applicable elements of any Order issued in this Second-Stage Case.
47. As captured by the Amenity Site Covenants, the applicant's revised development plan for the Amenity Site was as follows:
- a. The Amenity Site would continue to be divided into four (4) development parcels, each parcel being designated for a component of the applicant's development program for the Amenity Site as noted in the revised site plans for the Amenity Site submitted with the Responses. Parcels 1 and 4 would be the sites proposed for the facilities of a maritime education center; Parcel 2 would be the Terminus Park, and Parcel 3 would be the site of residential development. To facilitate phasing of the development of the Amenity Site, the Amenity Site has been divided into two (2) phasing parcels, Parcel A consisting of the northern one-third ($1/3^{\text{rd}}$) of the Amenity Site and Parcel B consisting of the remaining two thirds ($2/3^{\text{rds}}$) of the Amenity Site.
 - b. For the purposes of developing the Amenity Site, ECC intends to team with the Living Classrooms Foundation of Baltimore, Maryland (the "Living Classrooms"), a non-profit organization which developed and operates a successful maritime education center in Baltimore, Maryland, to organize and assist in the development of the maritime education program. Additionally ECC intends to team with Potomac Investment Properties, Inc. ("Potomac Investment"), an established District of Columbia-based developer of real estate, including multi-family residential projects, in the Washington, D.C. metropolitan area, in the development of the residential development on Parcel 3.

- c. Following the Conveyance Date, ECC would proceed to construct the facilities for a maritime education center consisting of two buildings on Parcels 1 and 4, and the portion of the Terminus Park on the part of Parcel 2 within Parcel A. The construction would be required to be completed within 6 years after the Conveyance Date.
- d. ECC would operate a number of programs on the Amenity Site. Soon after the Amenity Site was made available to ECC, ECC would commence a marine science program, which would target school students from kindergarten through twelfth grade. This program would involve conducting research boat field trips on the Anacostia and Potomac Rivers. Subsequently, ECC would pursue a plan to obtain the use of a sailing ship, which would be available for trips with students. A second program would be a sailing program involving upwards of 200 participants a year. As facilities are constructed, a boat-building component would be implemented for work on boats donated to ECC. This program would be designed for young adults in the model of the current Eagle Corps program partnered with AmeriCorps.
- e. When fully completed, the ECC maritime education center would conduct a wide range of programs on the Amenity Site, including boat building, a sailing center, marine science aquaculture and maritime park management. The maritime education center is modeled on the Living Classroom's facilities and programs, which operate successfully in Baltimore, Maryland.
- f. At the Conveyance Date and concurrent with the conveyance of the Amenity Site to ECC, ECC will lease back Parcel B to the applicant for a period of ten (10) years. The applicant would be permitted to continue the industrial use of Parcel B during this period. At the conclusion of the ten (10) year lease term, the lease would expire, and the applicant would surrender Parcel B to ECC. ECC would then be obligated to proceed to construct the remaining portion of the Terminus Park on the part of Parcel 2 on Parcel B within the next 12 months thereafter.
- g. ECC would be required to subsequently maintain the Terminus Park for public use and benefit.
- h. Parcel 3 would be reserved and dedicated for residential development. Residential development would be required to be undertaken no later than the time that market rate residential development was determined to be economically feasible. ECC has entered into a joint venture agreement with Potomac Investment

under which Potomac Investment will receive fee title to Parcel 3 for development subject to the terms of any Order in this Second-Stage Case after the applicant surrenders Parcel B to ECC at the expiration of the term of its lease for Parcel B.

- i. In the event that ECC defaulted in the performance of its obligations for development of the Terminus Park and the facilities for the maritime education center, or fails to convey legal title to Parcel 3 to Potomac Investment, Potomac Investment would receive legal title to the Amenity Site. Upon obtaining title to the Amenity Site, Potomac Investment would thereafter be required to develop and maintain the Terminus Park in accordance with the Modified Amenity Site Plans. Timely completion of the Terminus Park in conformance with the Modified Amenity Site Plans would be a condition to Potomac Investment's receipt of a building permit from the District of Columbia for development of Parcel 3.
48. The Zoning Commission at its regular meeting held on July 12, 1999 tabled its consideration of the Application for action and decision and requested further clarification of the Responses on two matters. The Zoning Commission moved to reopen the record in the Second-Stage Case for the limited purpose of permitting the applicant to clarify those matters -- one being related to its residential development proposal for the Amenity Site and the second related to pedestrian flow along the Waterfront Esplanade near the Waterfront Pavilions. The Zoning Commission also agreed to give the Office of Planning the opportunity to report on the Responses, which the applicant had previously submitted, and give a final report on the application as modified by the Responses.
 49. The applicant submitted to the Zoning Commission on August 20, 1999 a supplemental filing in response to the requests of the Zoning Commission for further clarification of the applicant's residential development proposal for the Amenity Site and for assurances that pedestrian flow along the Waterfront Esplanade would not be interrupted or impeded by the locations of the proposed seating areas for the Waterfront Pavilions (the "Supplemental Filing").
 50. The applicant concurrently submitted its Supplemental Filing with the Advisory Neighborhood Commission 6B and Advisory Neighborhood Commission 2D, and with the Office of Planning.
 51. As proposed in the Responses, the modified conditions to development of the Amenity Site would be captured in the Amenity Site Covenants imposed as applicable upon legal title to the various Parcels of the Amenity Site. As previously proposed the Amenity Site Covenants would

be required to be reviewed and approved by the Office of the Corporation Counsel for consistency with the Zoning Commission's action on the application and would be required to be recorded among the land records of the District of Columbia as an encumbrance upon legal title to the various Parcels of the Amenity Site prior to the issuance of any building permit for the PUD Buildings on the PUD Site based upon any Order approved by the Zoning Commission in the Second-Stage Case.

52. In the Supplemental Filing, the applicant modified the Responses as follows:

(a) With regard to the residential development proposal for the Amenity Site, the applicant:

- (i) agreed to permit the earlier termination of industrial use of the Amenity Site. The term of applicant's lease could now be terminated as early as the end of the fifth (5th) year after the Conveyance Date if the owner of Parcel 3 elects to then have residential development on Parcel 3 commence, provided that the applicant shall be entitled to at least one (1) year's prior written notice of such owner's election to terminate the applicant's use and occupancy of Parcel 3 under the leaseback arrangements the applicant would have for Parcel B.
- (ii) agreed to provide in the Amenity Site Covenants that residential development on Parcel 3 would occur within one (1) year after the time that market rate residential development on Parcel 3 is deemed to be economically feasible, but in any case no later than fifteen (15) years after the date that certificates of occupancy for no less than ninety percent (90%) of the net rentable area of the PUD Buildings have been issued by the District of Columbia for the PUD Buildings.
- (iii) agreed to require in the Amenity Site Covenants that periodic reports on economic feasibility of market rate residential development on Parcel 3 would be supplied to the Zoning Commission, with the first report to be supplied to the Zoning Commission starting with the earlier of (1) the expiration of the eleventh (11th) year after the Conveyance Date, or (2) one (1) year after the effective date of the earlier termination of the applicant's lease for Parcel B. A report on economic feasibility of residential development would be supplied to the Zoning Commission biannually thereafter

until such time a residential development of Parcel 3 is begun as evidenced by the issuance of a building permit by the District of Columbia. Each report would be required to evaluate for the Zoning Commission the then economic feasibility of market rate residential development on Parcel 3, with such evaluation to be based upon the set of model standards for determining economic feasibility of market rate residential development on Parcel 3 proposed by the applicant in the Supplemental Filing (the "Model Standards").

- (iv) refined the Model Standards (which had been previously presented in the Responses) to make the standards more definitive and a better indicator of when market rate residential development is economically feasible on Parcel 3, with the Model Standards to be made part of the Amenity Site Covenants.
- (v) Agreed to have made available to the Zoning Commission the sum of \$10,000.00 to permit the Zoning Commission to employ such additional expertise as the Zoning Commission might deem necessary to assist it in evaluating information supplied in the biannual reports on economic feasibility of market rate residential development on Parcel 3. The \$10,000.00 amount would be posted concurrently with and as a condition to the issuance of a building permit for the PUD Buildings by the District of Columbia under the auspices of this Order. These monies would be placed with an independent third party escrow agent mutually acceptable to the applicant and the Director of the Office of Zoning. The escrow agent would place these monies in an interest bearing account, with interest accruing to the owner of Parcel 3. When a biannual report on market feasibility is received, the Zoning Commission would be permitted through the Office of Zoning to draw upon those monies to employ one or more experts to provide additional professional assistance to the Zoning Commission as it evaluates the findings of a biannual report. The monies in the escrow account (or so much thereof as would be remaining) would be refunded to the owner of Parcel 3 at such time as the District of Columbia issues a building permit for construction of a building on Parcel 3 containing residential uses.

- (b) With regard to the pedestrian flow in the Waterfront Esplanade, the applicant has relocated the seating areas for the Waterfront Pavilions out of the pedestrian walkway so as to permit uninterrupted and unimpeded pedestrian traffic flow along the twenty (20) foot wide portion of the Waterfront Esplanade immediately fronting on the Anacostia River and adjacent to the Waterfront Pavilions. (See modified PUD Site Plan, Sheet 11)
53. The Office of Planning filed its report on the Responses and the Supplemental Filing dated September 8, 1999, and determined that the Responses and the Supplemental Filing were responsive to the requests of the Zoning Commission, and that the proposals made by the applicant further enhanced and improved the application and the PUD Project.
54. Neither Advisory Neighborhood Commission 6B nor Advisory Neighborhood Commission 2D filed any communications with the Zoning Commission in response to the Supplemental Filing.
55. The Zoning Commission concurs that the Capitol Gateway/Buzzard Point area is, in fact, a development opportunity area for housing, commercial, and public and recreation uses in the District of Columbia.
56. The Zoning Commission finds that the proposed PUD Project is located and designed in such a way that it serves as a "gateway" for those crossing the Frederick Douglass Bridge into the City. The PUD Project is sited between South Capitol and First Streets, SE, and acts as an important visual terminus to Half Street, SE. Its height, massing, varied waterfront facade and waterfront pavilions will create a significant portal or gateway feature.
57. The Zoning Commission concurs with the applicant and the Office of Planning and finds that the proposed PUD Project is not inconsistent with the long range goals and guidelines of the Comprehensive Plan, and that the project is generally consistent with the Comprehensive Plan Land Use Map designation of the site in that not every square within the designated area need be developed with all mixed-use components so long as the uses provided have a salutary effect on the mix of uses in the general area.
58. The Zoning Commission concurs with the Office of Planning and finds that the proposed PUD Project is generally consistent with the height, bulk and setback requirements of the proposed BP Overlay District currently under consideration by the Zoning Commission, including but not limited to scheduled termination of industrial type uses on the PUD

Site and the Amenity Site, two (2) large tracts of land in the BP Overlay District area.

59. The Zoning Commission concludes the retail, specialty retail/exhibition and waterfront pavilions components of the PUD Site will provide opportunity for uses that will serve the local community, will serve as a bridge between the project and the local community, and will enhance and enliven the proposed waterfront esplanade of the PUD Project.
60. The Zoning Commission concludes, and concurs with the applicant, that the PUD Site has locational advantages, which make it suitable for development in accordance with the application. It is one of only a few sites in the District of Columbia that can accommodate large floor plates at an effective rate so as to be competitive and flexible enough to address both GSA and large, major headquarter type organizations. The Zoning Commission also concludes that the economic and fiscal impacts of development of the PUD Site would be considerable.
61. The Zoning Commission finds that the PUD Project will be important in encouraging federal agencies to remain in the District of Columbia and locate in the Southeast Quadrant of the City, and in inducing private sector companies to relocate from competing suburban markets to the District of Columbia.
62. The Zoning Commission finds that the various amenities offered by applicant are sufficient to support the final approval of the application, including but not limited to the point to point shuttle bus service between the Navy Yard MetroRail Station and the PUD Site, the transportation management plan for the PUD Buildings, the dedication of rentable areas of the PUD Buildings to community related retail and service uses, and the donation to ECC of legal title to the Amenity Site subject to restrictive covenants related to use and development of the Amenity Site.
63. The Zoning Commission concurs that the Capitol Gateway/Buzzard Point area is, in fact, a development opportunity area for housing, commercial, and public and recreation uses in the District of Columbia.
64. The Zoning Commission finds that the Model Standards as proposed by the applicant (to be used to determine when market-rate residential development would be deemed economically feasible) are reasonable and comprehensive and are an appropriate model upon which biannual reporting to the Zoning Commission should be based.

65. The Zoning Commission concludes that biannual reporting to the Zoning Commission, on the economic feasibility of market rate residential development developed based upon the Model Standards is a reasonable mechanism to determining when residential development on Parcel 3 would be appropriate. The Zoning Commission also concludes that it is reasonable and appropriate that biannual reports commence on the earlier of the eleventh (11th) anniversary of the Conveyance Date, or one year after the lease for Parcel B of the Amenity Site to the applicant is terminated.
66. The Zoning Commission concludes that having access to the sum of \$10,000.00, held by an third party escrow agent and accessible to by the Zoning Commission to permit it to employ one or more experts to provide additional assistance to the Zoning Commission in evaluating any biannual report received concerning economic feasibility of market rate residential development of Parcel 3, is a viable tool to permit the Zoning Commission to duly evaluate when residential development of the Amenity Site should occur.
67. The Zoning Commission concludes that residential development of the Amenity Site is not imminent and that applicant's proposal for fixing residential development is a reasonable way to insure that residential development in accordance with the applicable Zoning Regulations will occur on the Amenity Site in the future, and in any event will occur within fifteen (15) years after the date that certificates of occupancy for no less that 90% of the net rentable area of the PUD Buildings are issued by the District of Columbia.
68. The Zoning Commission finds that the applicant has entered into a First-Source Employment Agreement with the Department of Employment Services to promote and encourage the hiring of District of Columbia residents.
69. The Zoning Commission finds that the applicant has entered into a Memorandum of Understanding with the LBOC to use the resources of the LBOC to utilize minority business enterprises in the development of this project.
70. The Zoning Commission finds that the applicant has proposed a supplemental employment plan, which will enhance the First Source Employment Agreement and provide additional opportunities for job training and placement for District residents.
71. The Zoning Commission finds that the concerns of ANC 6B and ANC 2D are entitled to "great weight" as provided by applicable law. The Zoning

Commission notes that neither ANC 6B nor ANC 2D opposed the application. The Zoning Commission further notes that the applicant has re-evaluated the feasibility of residential uses at the present time, but in response to the request of ANC 6B has found that residential development in the near term is not economically feasible. As suggested by ANC 6B and ANC 2D, the applicant, submitted a supplemental plan to enhance employment opportunities for the District residents, arising out of the development of the PUD Project. Further, as recommended by ANC 2D, the applicant has agreed to implement a traffic management program for the Project's offstreet parking facility as part of its application. The Zoning Commission finds it unreasonable and contrary to fairness for the Zoning Commission to postpone any decision on the PUD until the Zoning Commission acts on the proposed BP Overlay District, or to agree today to decline to amend this Order at the end of the Order's specified term.

72. The Zoning Commission further concludes that the PUD project promises to spur economic development in a Development Opportunity Area and the Central Employment Area as identified in the Comprehensive Plan. The Zoning Commission finds this development is in scale and keeping with the site's "gateway" location, and that the preliminary design for height bulk and mass of the project fully complements and supports the "gateway" concept. The Zoning Commission also concludes that the proffers related to the PUD Site, including the Amenity Site are significant amenities. The Zoning Commission finds that goals of the Comprehensive Plan to introduce residential activity to this "gateway" area of the city are important and that this goal is furthered by the residential component proposed for the Amenity Site.
73. The proposed action of the Zoning Commission to approve the application for second-stage approval with conditions was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated November 5, 1999, found that the PUD would not adversely affect the federal establishment or identified federal interests. The PUD was not found to be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the Capitol Gateway/Buzzard Point area and the District of Columbia.
2. The development of this PUD Project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned residential, commercial and mixed-use developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
3. The development of the project is compatible with District-wide and neighborhood goals, plans and programs, and is sensitive to environmental protection and energy conservation.
4. The approval of this application is consistent with the Comprehensive Plan of the National Capital because it will produce a "gateway" project for the Capitol Gateway/Buzzard Point area, act as a pioneer and catalyst for mixed-use redevelopment of the area, strengthen the distinguishing physical waterfront qualities of the area, and increase employment opportunities.
5. The approval of the application is consistent with the purposes of the Zoning Act and the Zoning Map of the District of Columbia, which include stabilizing land values and improving mixed-use areas.
6. The application can be approved with conditions, which ensure that the development will not have an adverse effect on the surrounding community or the District. The project will enhance and promote the revitalization of the area.
7. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Zoning Commission has accorded to ANC 6B and ANC 2D the "great weight" to which each is entitled under law.
9. The approval of this application is not inconsistent with the Comprehensive Plan for the National Capital and the purposes of the Zoning Act.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission hereby orders that this application for second-stage review of a PUD for the PUD Site (being collectively Lots 800, 801 and 802 in Square 707, Lot 809 in Square 708, Lots 807 and 808 in Square 708E, and Lot 806 in Square 708S), with zoning pursuant to the C-3-C Zone District, be APPROVED. This approval is subject to the following guidelines, conditions and standards.

1. The PUD Site shall be developed in accordance with those modified plans for the PUD Site prepared by the architectural firm of Davis Buckley, last revised as of May 17, 1999 and submitted by the applicant to the Zoning Commission with Applicant's Responses to Inquiries of the Zoning Commission, dated May 17, 1999, (the "Responses", being Exhibit 61 in the Second-Stage Case), otherwise identified as PUD Site Plan, Sheets Nos. 1 through 35, as further modified by the Supplemental Filing, dated August 20, 1999 (being Exhibit 67 in the Second-Stage Case) related to revised PUD Site Plan, Sheet 11 related to the location of outdoor seating for the Waterfront Pavilions (collectively plans for the development of the PUD Site submitted with the Responses, as modified by the Supplemental Filing being the "Modified PUD Site Plans"), as modified by the guidelines, conditions and standards of this Order.
2. The maximum building height of the portion of the PUD Site Buildings located 110 feet or less from the bulkhead along the waterfront of the Anacostia River shall not exceed 109 feet, and the maximum building height of the portions of the PUD Site Buildings located more than 110 feet from the bulkhead along the waterfront of the Anacostia River shall not exceed 130 feet, with the height of the building of each of the PUD Site Buildings to be at a lower height along Potomac Avenue, SE, all in accordance with the Modified PUD Site Plans.
3. The floor area ratio (FAR) of the PUD Site shall not exceed 6.0, all of which may be devoted to commercial uses.
4. The lot occupancy of the PUD Site Buildings on the PUD Site shall not exceed fifty-eight percent (58%).
5. The PUD Project shall be developed under this Order only as two (2) separate buildings, sited so as to substantially maintain and preserve, at grade and above, the vista along Half Street, SE at Potomac Avenue, S.E. to the waterfront of the Anacostia River, and with the East Building pulled back along the cascading steps/proposed courtyard to open the vista from Half Street, SE at Potomac Avenue, S.E. to the Anacostia River, all in accordance with the Modified PUD Site Plans.

6. The exterior project materials of the PUD Site Buildings shall be primarily precast concrete, articulated by glass and metal curtain wall elements, all in accordance with the Modified PUD Site Plans.
7. The applicant shall dedicate not less than 6,750 square feet of gross floor area on the Ground Floor level of the PUD Site Buildings fronting on Potomac Avenue, SE in the locations reflected on the Modified PUD Site Plans, Sheet 34, and such area shall be dedicated to community oriented retail and/or personal service establishments, such as but not limited to food stores, eating establishments, dry cleaning establishments, beauty and barber shops, and shoe repair shops. The applicant may not to convert the identified Retail Areas along the Ground Floor level of the PUD Site Buildings fronting on Potomac Avenue to office uses or to uses which would not be considered community oriented retail uses accessible to the public. The applicant shall include a specific statement of dedication in the PUD Site Covenants to be recorded among the land records of the District of Columbia as hereinafter provided for.
8. The applicant shall dedicate not less than 12,000 square feet of gross floor area on the Esplanade/Garage Level 1 Floor of the East PUD Building fronting on the Waterfront Esplanade along the Anacostia River in the location shown on the Modified PUD Site Plans, Sheet 34, to exhibition/gallery type uses, specialty retail or both, with specialty retail being uses such as, but not limited to, museum and exhibition spaces, and spaces for miscellaneous shopping opportunities, including for crafts and jewelry, books, and stationery. The applicant shall further agree not to convert the identified Exhibition/Specialty Retail Area to office uses or other uses to which will not be accessible to the public. The applicant shall include a specific statement of dedication in the PUD Site Covenants.
9. The applicant shall dedicate not less than 3,000 square feet of gross floor area in the Waterfront Esplanade along the Anacostia River in the location shown on Modified PUD Site Plans, Sheet 34, as the location of two (2) enclosed Waterfront Pavilions; these Waterfront Pavilions shall be dedicated to food and beverage services as proposed by the applicant in its presentation to the Commission at the public hearing of December 7, 1998 and as reflected in the Responses, as modified by the Supplemental Filing. The applicant shall locate outdoor seating for the Waterfront Pavilions in a manner that does not interrupt pedestrian access to and pedestrian flow along the Waterfront Esplanade. The applicant shall further agree not to convert these Waterfront Pavilions to office uses or other uses to which will not be accessible to the public. The applicant shall include a specific statement of dedication in the PUD Site

Covenants to be recorded among the land records of the District of Columbia as provided in Condition No.18 of this Order.

10. The design and exterior materials of the Waterfront Pavilions shall be in conformance and consistent with the Modified PUD Site Plans, and specifically modified Sheet 11 thereof.
11. Pedestrian circulation improvements of the PUD Site shall be in conformance and consistent with Sheet 7 of the Modified PUD Site Plans, as further modified by revised Sheet 11 of the Modified PUD Site Plans submitted with the Supplemental Filing, and landscaping improvements of the PUD Site shall be in conformance with the detailed planting plans appearing as Sheets 8, 9 and 10 of Modified PUD Site Plans.
12. The vehicular circulation plan, off street loading and off street parking plans for the PUD Site shall be as reflected on multiple sheets of the Modified PUD Site Plans.
13. The applicant shall have the flexibility on the final detailing of the PUD Site Buildings to:
 - a. Vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, location of elevators, electrical and mechanical rooms, from what may be shown in the Modified PUD Site Plans so long as the variations do not change the exterior configuration of the respective PUD Site Building, excluding the penthouses, and the Waterfront Pavilions;
 - b. Make minor adjustments in the façade window detailing, including the flexibility to shift the location of the doors to any retail/specialty retail/exhibition areas on the grade levels of the PUD Site Buildings from what may be shown in the Modified PUD Site Plans to accommodate the users and uses of those areas of the PUD Site Buildings;
 - c. Modify the off street parking and off street loading plans of the PUD Site Buildings as is shown in the Modified Site Plans, including the arrangement thereof, provided that no lesser amount of parking or loading services are provided.
 - d. Vary the species of plant materials specified in the Modified Site Plans.

- e. Vary the final selection of the exterior materials within the color ranges and material types as proposed in the Modified PUD Site Plans.
 - f. Allow the flexibility permitted pursuant to the provision of 11 DCMR, Chapter 24.
14. Antennas shall be permitted on the various roofs of the PUD Site Buildings and the Waterfront Pavilions, subject to the applicable Zoning Regulations.
15. Upon occupancy, in the aggregate, of fifty (50%) of the gross floor area of the PUD Site Buildings, the applicant shall commence operation of a shuttle bus service to the public, between the PUD Site and the Navy Yard MetroRail Station. Service shall be provided by vehicles with a capacity of no less than 24 seated passengers, between at least 6:30 a.m. and 7:00 p.m. on Monday through Friday, other than Federal or District of Columbia holidays where the PUD Site Buildings are not operated on standard/normal operating hour basis. There shall be no charge to the public to ride and use the proposed shuttle bus service. During peak hours, being three hours in the morning and three hours in the evening, the shuttle buses will operate on a 6-minute headway. During off-peak hours, one vehicle will be circulated between the PUD Site and the Navy Yard MetroRail Station, operating on a 10-minute headway. The applicant shall be afforded the flexibility based upon a proven record to vary the operating headway of the shuttle bus service to one which reflects the established needs of patrons of the shuttle bus service.
16. Upon occupancy, in the aggregate, of fifty percent (50%) of the gross floor area of the PUD Site Buildings, the applicant shall implement a traffic management plan in the PUD Site Buildings which shall include three components, i.e., preferred parking for vanpools and carpools; an operation element in the form of commuter assistance programs and promotion of flextime schedules, and the establishment of a coordinator to monitor the performance of the program.
17. No building permit shall be issued for development of the PUD Project on the PUD Site until the applicant has recorded one or more covenants (the "PUD Site Covenants") in the land records of the District of Columbia, between the owner and the District of Columbia, encumbering legal title to the PUD Site. The PUD Site Covenants, in a form acceptable to applicant, ECC, Potomac Investment, the Office of Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"), as accurately reflecting the terms of this Order, shall capture the conditions and restrictions of this Order and amendments

thereto related to development of the PUD Site, and shall be made binding upon the owner and all the successors in title to the PUD Site.

18. The Office of Zoning shall not release the record of this Second-Stage Case to the Zoning Division of DCRA until the applicant has filed a certified copy of the PUD Site Covenants, as filed in the land records of the District of Columbia, with the Office of Zoning for indexing among the records of the Zoning Commission in this Second-Stage Case.
19. With regard to the Amenity Site, the applicant shall comply with the following conditions:
 - a. the applicant shall donate and convey to The Earth Conservation Corps or its successors (collectively "ECC") legal title to the Amenity Site no later than thirty (30) days after the date that construction of the PUD Project commences on the PUD Site under a building permit for the PUD Site Buildings issued by the District of Columbia pursuant to and under the auspices of this Order (the "Conveyance Date"). The applicant shall be entitled however to leaseback from ECC Parcel B of the Amenity Site (as such Parcel is depicted in the Supplemental Filing and described in item (c) below of this condition) for a period of ten (10) years from and after the Conveyance Date. The lease shall provide that ECC shall be given the opportunity to terminate the term of that lease prior to the expiration of the 10th year for the purpose of commencing residential development on Parcel 3 of the Amenity Site (as such Parcel is depicted in the Supplemental Filing and described in item (c) below of this condition) in accordance with the Zoning Regulations then applicable to Parcel 3. In no event however may the term of the lease be terminated earlier than end of the fifth (5th) year after the Conveyance Date. If ECC elects to earlier terminate the term the lease, the applicant shall be entitled to, and ECC shall give to applicant, a notice of termination of the lease arrangements. The notice of termination must be received by the applicant no later than 365 days prior to the effective date of a termination of the term of the lease.
 - b. From and after the Conveyance Date, the applicant shall cease to use Parcel A of the Amenity Site (as such Parcel is depicted in the Supplemental Filing and described in item (c) below of this condition) for any industrial type uses, including any use currently being conducted on Parcel A as of the date of this Order by the applicant.

- c. Legal title to the Amenity Site shall be donated and conveyed to ECC on the Conveyance Date encumbered by the following restrictive covenants (the "Amenity Site Covenants") related to the use and development of the Amenity Site:

(i) Development of the Amenity Site Generally

- (A) The Amenity Site shall consist of four (4) development parcels ("Parcel 1, Parcel 2, Parcel 3 and Parcel 4") and two (2) phasing parcels ("Parcel A" and "Parcel B"), all as reflected on Sheet 1 of those certain modified plans on the development of the Amenity Site, prepared by the architectural firm of Davis Buckley, last revised as of May 17, 1999, and submitted to the Zoning Commission with the Responses ("Modified Amenity Site Plans").
- (B) Parcels 1 and 4 shall be developed as facilities for a maritime education program or similar educational program, except as otherwise provided for in this Order. Parcel 2 shall be for development as a Terminus Park in accordance with the Modified Amenity Site Plans. Parcel 3 shall be dedicated to and restricted for development of residential uses as permitted by the applicable provisions of the Zoning Regulations.
- (C) Parcel A is the designated location for development of facilities for a maritime education program or similar educational program and for development of a portion of the Terminus Park.
- (D) Parcel B shall consist of Parcel 3 and the portions of Parcels 1 and 2 not included in Parcel A. Parcel B is the designated location for development of the remaining portion of the Terminus Park and for residential uses as permitted by applicable Zoning Regulations.
- (E) The applicant shall surrender, and cease to use Parcel B for any industrial type uses, as of the

expiration or earlier termination of the term of its lease for Parcel B.

(F) As shall be provided in the Amenity Site Covenants, development of the Amenity Site shall occur in accordance with the following development scheme and schedule:

(1) Development of Parcel A, including the portion of the Terminus Park located within Parcel A, shall be completed within six (6) years after the Conveyance Date.

(2) Development of the portion of the Terminus Park within Parcel B shall occur within twelve (12) months after applicant surrenders Parcel B to ECC on expiration of the Lease.

(3) Development of Parcel 3 for residential uses shall commence no later than the time that market-rate residential development on Parcel 3 is deemed to be economically feasible, but in any event not later than fifteen (15) years after the date that certificates of occupancy for no less than eighty-five percent (85%) of the net rentable areas of the PUD Building have been issued by the District of Columbia.

(ii) Facilities of a Maritime Education or Similar Program.

(A) Parcels 1 and 4 shall be developed for facilities of a maritime education or similar education program as described in the applicant's Second-Stage Case and as last described in the Responses by the sixth (6th) anniversary of the Conveyance Date.

(iii) Terminus Park.

(A) The Terminus Park, including the landscaping improvements and circulation plan, shall be developed in two (2) phases as Parcels A and B, and shall be developed, as applicable, in

conformance and consistent with Sheets 3, 4 and 5 of the Modified Amenity Site Plans, as modified by the guidelines, conditions and standards of this Order.

(B) Development of the Terminus Park shall occur not later than the dates specified in the following schedule:

(1) the portion of the Terminus Park situated within Parcel A shall be completed no later than 6 years after the Conveyance Date.

(2) the portion of the Terminus Park situated within Parcel B shall be completed no later than 12 months after surrender of Parcel B to ECC upon the expiration of the leaseback to the applicant.

(C) The Terminus Park shall be accessible to the general public; the District of Columbia shall have no obligation to assume responsibility for development, repair, replacement or maintenance of the Terminus Park.

(iv) Residential Development

(A) Parcel 3 shall be developed for residential uses in conformance with the Zoning Regulations in effect from time to time.

(B) Parcel 3 shall contain no less than 253,502 square feet of gross floor area dedicated to residential development.

(C) Residential development of Parcel 3 shall commence no later than one (1) year after the date that market rate residential development on Parcel 3 is determined to be economically feasible pursuant to subparagraphs (E) and (F) hereof.

(D) Residential development of Parcel 3 may occur earlier than the tenth (10th) anniversary of the Conveyance Date at the election of the owner of

Parcel 3, subject to the rights of the applicant to lease Parcel B for a term of no less than five (5) years after the Conveyance Date.

- (E) Market rate residential development on Parcel 3 shall be deemed to be economically feasible at such time as the Zoning Commission determines that market rate residential development is economically feasible by applying the Model Standards, being those standards proposed by the applicant in its Supplement Filing, appearing as Tab 4 thereto; provided that the land value assigned to Parcel 3 in applying the Model Standards to determine the feasibility of development of Parcel 3 shall be \$500,000 (in 1999 dollars).
- (F) On or about the eleventh anniversary (11th) of the Conveyance Date, the owner of Parcel 3 shall supply to the Zoning Commission with a report evaluating whether market rate residential development on Parcel 3 is then economically feasible applying the Model Standards; a new report evaluating the feasibility of market rate residential development shall be submitted biannually thereafter to the Zoning Commission until such time as either residential development on Parcel 3 has commenced or the Zoning Commission determines, based upon the Model Standards, that market rate residential development is economically feasible; as provided in subparagraph (E) above of this Paragraph, the land value to be assigned to Parcel 3 in applying the Model Standards to determine the feasibility of development of Parcel 3 shall be deemed to be \$500,000 (in 1999 dollars).
- (G) The sum of \$10,000.00 shall be posted to permit the Zoning Commission to employ such additional expertise as the Zoning Commission might deem necessary to assist it in evaluating information supplied in the biannual reports on economic feasibility of market rate residential development on Parcel 3. The \$10,000.00

amount shall be posted concurrently with and as a condition to the issuance of the building permit for the PUD Buildings by the District of Columbia under the auspices of this Order. These monies shall be placed with an independent third party escrow agent mutually acceptable to the applicant and the Director of the Office of Zoning. The escrow agent shall place these monies in an interest bearing account, with interest accruing to the owner of Parcel 3. When a biannual report on market feasibility is received, the Zoning Commission shall be permitted through the Office of Zoning to draw upon those monies to employ one or more experts to provide additional professional assistance to the Zoning Commission as it evaluates the findings of a biannual report. The monies in the escrow account (or so much thereof as would be remaining) shall be refunded to the owner of Parcel 3 concurrently with the issuance by the District of Columbia of the Certificate of Occupancy for construction of a building on Parcel 3 containing residential uses.

- (H) From and after the date that the applicant ceases to use Parcel B for its industrial uses and prior to commencement of development of Parcel 3 for residential uses, Parcel 3 shall be landscaped and maintained in a park like setting compatible with the Terminus Park.

(v) Conveyance of Legal Title to the Amenity Site

The applicant shall donate and convey legal title to the Amenity Site to The Earth Conservation Corps ("ECC") no later than the Conveyance Date. Legal title to the Amenity Site shall be encumbered by the Amenity Site Covenants prescribed in subsection (f) below of this Condition 20 of this Order.

- 20. No building permit shall be issued for the PUD Project until the applicant records the Amenity Site Covenants in the land records of the District of Columbia, between the applicant, as the owner of the Amenity Site, and the District of Columbia, encumbering the legal title to the Amenity Site.

The Amenity Site Covenants shall be in a form acceptable to the applicant, ECC, Potomac Investment and the Office of the Corporation Counsel and the Zoning Division of DCRA as accurately reflecting the terms of this Order. The Amenity Site Covenants shall bind the owner(s) of the Amenity Site and subsequent successors in title to the Amenity Site to use and develop the Amenity Site in accordance with the applicable provisions of this Order and amendments thereto made by the Zoning Commission and shall incorporate the various guidelines, conditions and standards of this Order related to use and development of the Amenity Site. The Amenity Site Covenants shall be recorded among the land records of the District of Columbia, and shall be recorded no later than the date that the applicant commences construction of the PUD Site Buildings pursuant to this Order under a building permit issued by the District of Columbia. The applicant may not convey legal or beneficial title to the Amenity Site to any party until such time as the Amenity Site Covenants are recorded among the land records of the District of Columbia. The District of Columbia shall be the beneficiary of the Amenity Site Covenants with full rights of enforcement against the owner of a Parcel who fails to comply with or perform any restrictive covenant applicable to that Parcel.

21. The applicant shall comply with the First Source Agreement entered into with the Department of Employment Services, and the Memorandum of Understanding entered into with the Local Business Opportunity Commission.
22. The amendment to the Zoning Map from Zone District M to Zone District C-3-C for the PUD Site shall be effective upon recordation of the PUD Site Covenants among the land records of the District of Columbia.
23. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, the applicant must file for a building permit for the PUD Site Buildings as specified in 11 DCMR 2407.1 and 2406.8 to preserve the effectiveness of this Order, unless the Zoning Commission otherwise acts to extend the validity of this Order. Construction shall start within three years of the effective date of this Order to preserve the effectiveness of this Order, unless the Zoning Commission otherwise acts to extend the validity of this Order.
24. Pursuant to D.C. Code Sec. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Acts of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25, (1987), and this Order is conditioned upon full

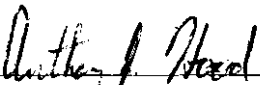
compliance with those provisions. Nothing in this Order shall be understood to require the Zoning Division/DCRA to approve permits, if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at the regular monthly meeting on September 13, 1999: by a vote of 3 to 1 (Angel F. Clarens, Anthony H. Hood and Herbert M. Franklin, to grant second-stage approval; John G. Parsons to deny second-stage approval).


This order was adopted by the Zoning Commission at the regular monthly meeting on November 8, 1999 by a vote of 4 to 1 (Anthony H. Hood, Herbert M. Franklin; Carol J. Mitten and Kerry G. (Kwasi) Holman to adopt; John G. Parsons to deny).

In accordance with the provisions of DCMR 3028, this order shall become final and effective upon publication in the D.C. Register; that is on,

NOV 26 1999.



ANTHONY J. HOOD
Vice Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning

ZCO910A/SDB